

BEFORE THE MARYLAND STATE BOARD OF EDUCATION

HARRISON W., et al.

Appellants

v.

BOARD OF EDUCATION
OF CARROLL COUNTY

Appellee

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Case No. MSDE-BE-16-16-02815

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**THE BOARD OF EDUCATION OF CARROLL COUNTY'S
RESPONSE TO EXCEPTIONS TO SUMMARY AFFIRMANCE**

Appellee, the Board of Education of Carroll County (the "County Board"), by its attorneys, Edmund J. O'Meally, Andrew G. Scott, Adam E. Konstas, and Pessin Katz Law, P.A., and in accordance with COMAR 13A.01.05.07F(2), submits this Response to Appellants' Exceptions to the Proposed Ruling of Administrative Law Judge ("ALJ") Harriet Helfand granting the County Board's Motion to Dismiss or in the Alternative for Summary Affirmance. For the reasons discussed below, the Maryland State Board of Education (the "State Board") should adopt the ALJ's Proposed Rulings in this case and grant the County Board's Motion to Dismiss or in the Alternative for Summary Judgment.

I. BACKGROUND

At the its December 9, 2015 Special Meeting, the County Board voted by a margin of 4-1 to adopt the *Superintendent's Final School Closure and Boundary Adjustment Recommended Plan* dated December 9, 2015 (hereafter, the "Superintendent's Final Plan") to close Charles Carroll Elementary School ("Charles Carroll"), New Windsor Middle School ("New Windsor"), and North Carroll High School ("North Carroll") effective July 1, 2016.

Appellants herein filed their appeal to the State Board on January 6, 2016 pursuant to Md. Code Ann., Educ. § 4-205(c) and COMAR 13A.02.09.03 concerning the County Board's decision to close North Carroll.

On January 20, 2016, the State Board transmitted the appeal to the Office of Administrative Hearings ("OAH") to conduct hearings before the ALJ on this appeal and the four other appeals filed contesting the December 9, 2015 decision of the County Board to close Charles Carroll, New Windsor, and North Carroll.

On February 11, 2016, the County Board filed a Motion to Dismiss or in the Alternative for Summary Affirmance (the "Motion") regarding its decision to close North Carroll. In that Motion, the County Board asserted that the ALJ should recommend that the State Board should dismiss a portion of Appellants' appeal in accordance with COMAR 13A.01.05.03C because certain Appellants lacked standing to bring the appeal. The County Board further argued that, with regard to those appeals that were not susceptible to a Motion to Dismiss, the ALJ should recommend that the State Board should enter summary affirmance in the County Board's favor in accordance with COMAR 13A.01.05.03D because the County Board fully complied with both its policy regarding school closures and the provisions of COMAR 13.02.09 *et seq.*, and because the County Board's decision was not arbitrary, unreasonable, or illegal.

On March 18, 2016, Appellants filed a Response to the County Board's Motion, and on March 25, 2015, the County Board filed a Memorandum in Reply to Appellants' Response. Appellants filed a Supplement to the Response on April 8, 2016, and the County Board filed a Memorandum in Reply to the Supplemental Response on April 11, 2016. On April 11, 2016, the ALJ conducted a motions hearing during which the County Board and Appellants offered arguments on the County Board's Motion. On May 5, 2016, the ALJ issued a Proposed Ruling

on Motion to Dismiss and Proposed Ruling on Motion for Summary Affirmance (the “Proposed Rulings”). In her Proposed Rulings, the ALJ proposed that the Board’s Motion to Dismiss and Motion for Summary Affirmance be granted.

On May 18, 2015, Appellants filed their Exceptions to Summary Affirmance (“Exceptions”). In a footnote, Appellants indicated that they also file exceptions to the ALJ’s Proposed Ruling on the County Board’s Motion to Dismiss, and, rather than providing any argument, they incorporate by reference their Responses to the County Board’s Motion to Dismiss. *See* Exceptions at 1 n.1.

II. THE ALJ’S PROPOSED RULINGS

In her Proposed Ruling on the County Board’s Motion to Dismiss, the ALJ concluded that the County Board’s Motion to Dismiss should be granted and concluded as a matter of law that under the State Board’s standing jurisprudence, Ryan Warner, Mayor of Manchester; Christopher Nevin, Mayor of Hampstead; the North Carroll Recreation Council; Belisimo’s; and Illiano’s J&P Restaurant lack standing to pursue an appeal of the County Board’s adoption of the Superintendent’s Final Plan. *See* Proposed Ruling on Motion to Dismiss, at 14.

In her Proposed Ruling on the County Board’s Motion for Summary Affirmance, the ALJ considered the sole issue of whether the County Board’s Motion for Summary Affirmance should be granted. *See* Proposed Ruling on Motion for Summary Affirmance, at 3. The ALJ examined the supporting documentation filed by the parties in support of their motions. *See id.* at 4-9. The ALJ also made numerous findings of material facts about which there is no genuine dispute. *See id.* at 9-31. Ultimately, the ALJ concluded as a matter of law that there are no material facts in dispute as to whether the County Board acted arbitrarily and unreasonably or

illegally in its adoption of the Superintendent's Final Plan, and that the County Board is entitled to summary affirmance of its decision. *See id.* at 46.

For the reasons discussed below, the State Board should adopt the ALJ's Proposed Rulings and thereby grant the County Board's.

III. ARGUMENT

The overall argument raised by Appellants in their Exceptions is that the ALJ misinterpreted the applicable legal standards in this case and "simply accepted the position of CCPS that its decision was presumptively correct." Exceptions at 1. In conclusory fashion, Appellants state that "[r]ather than assess whether CCPS' claimed analysis was appropriately undertaken, supported and led to rational conclusions, the ALJ ignored blatant factual disputes and clear inferences demonstrating that CCPS undertook a cursory effort before deciding to close North Carroll High School based on flawed and limited information and irrational conclusions." *Id.*

Appellants are correct in one respect – the County Board's decision *is* presumptively correct, a principle that has eluded Appellants in this appeal. Appellants' Exceptions present nothing more than attempts to confuse the issues of this case with irrelevant arguments unsupported by any credible or substantive evidence. Appellants' Exceptions fail to overcome the *prima facie* correctness of the County Board's decision and fail to raise any genuine issue of material fact that the County Board's decision was not arbitrary and unreasonable or illegal. Appellants' Exceptions suffer from the same flaw as their Response memoranda in that they have merely presented unsupported argument demonstrating their disagreement with the County Board's decision. They have not offered any credible or substantive evidence to assert a genuine

dispute of the material facts that support the County Board's decision. As a result, the State Board should adopt the ALJ's Proposed Rulings and grant the County Board's Motion.

A. The ALJ Applied the Proper Legal Standards

1. School Closing Standard

In her Proposed Ruling, the ALJ set forth the applicable legal standard governing school closing found in COMAR 13A.02.09.01. *See* Proposed Ruling on Summary Affirmance, at 36. The ALJ recognized that the County Board is required to establish procedures to be used in making decisions on school closings and that the County Board's Administrative Procedures for Public School Closings found in the County Board's Educational Facilities Master Plan "essentially mirror those set forth in COMAR 13A.02.09.01." *Id.* at 37. The ALJ noted that COMAR 13A.02.09.01(B)(1)-(8) as well as the County Board's Administrative Procedure set out the eight (8) school closing factors that the County Board must consider. *See id.* at 36. The ALJ also set forth the public hearing and notice requirements of COMAR 13A.02.09.01(C) as well as the requirements of COMAR 13A.02.09.01(D) that the final decision of the County Board be announced at a public session and be in writing and include the rationale for the school closing and address the impact of the proposed closing on the eight (8) closing factors. *See id.* at 37.

In their Exceptions, Appellants attempt to impose inapplicable requirements upon the Board by conflating the standards set out in the County Board's Boundary Adjustment Policy and Administrative Regulation JCAA with the requirements of COMAR 13A.02.09.01 and the Board's Administrative Procedures for Public School Closings. *See* Exceptions, at 3-4, 9. Appellants also attempt to impose additional mandatory requirements upon the Board by framing the "local assumptions" as a requirement that the Board take a "comparative approach," pointing

to a small portion of the correspondence they attach as Exhibit A as “proof” of such an additional requirement. Exceptions, at 3. Appellants’ last minute attempt at a “gotcha” moment is misplaced and demonstrates a flawed understanding of the rules governing the County Board’s final decision subject to the instant appeal – namely, the County Board’s Administrative Procedures for Public School Closings and COMAR 13A.02.09.01.

The County Board’s decision of December 9, 2015 was a decision to close Charles Carroll, New Windsor, and North Carroll. As a result of closing North Carroll, the final plan consolidated the boundaries of Manchester Valley High School (“Manchester Valley”) and North Carroll and combined the majority of the two student populations at Manchester Valley. Contrary to Appellants’ argument, which they did not even raise in their appeal, Response in Opposition to the County Board’s Motion for Summary Affirmance, or at argument before the ALJ,¹ the decision subject to Appellants’ appeal was a school closure decision, not an attendance boundary decision. It is the Superintendent’s and County Board’s adherence to COMAR 13A.02.09 that governs this appeal. The ALJ properly found that the eight closing factors were considered by the Superintendent and that the County Board’s decision was not arbitrary and unreasonable or illegal. Appellants’ attempt to create a factual dispute that does not exist merely distracts from the proper analysis in this case.

¹ The County Board recognizes that “exceptions are deemed part of the record that is before the agency in making its final determination” and that “there is nothing in the [Administrative Procedure Act] or corresponding regulations that would preclude a party from offering new evidence in support of the party’s exceptions, subject to the satisfaction of due process consideration before such evidence may be admitted.” *Mehrling v. Nationwide Ins. Co.*, 371 Md. 40, 61 (2002). However, the State Board has rejected additional evidence offered after a hearing before an ALJ where the evidence was immaterial to the case. *See Neal v. Anne Arundel County Board of Education*, MSBE Op. No. 15-23, at 7 (2015). The County Board requests that the new exhibits offered by Appellants in their Exceptions be rejected. Additionally, the County Board requests that Appellants’ arguments not presented before the ALJ should also be rejected, *i.e.* that the County Board should have followed its Boundary Adjustment Policy JCAA.

Appellants' argument that the County Board did not conduct a system-wide analysis relies on these inapplicable standards, is not supported by the statute or regulations, and is highly impractical given the system-wide declining enrollment and the impact that this declining enrollment has on State and local funding, school utilization, and the delivery of educational programs. Appellants fault the ALJ that "her decision affirming North Carroll's closure was only justified by condemning it and the population it served for a countywide problem." Exceptions, at 10. Appellants' argument seemingly requiring an individualized decision fails to consider the use of the plural in the prevailing statutory language set forth in Education Article Sections 4-120(a), which provides that "if a county board considers it practicable, it *shall consolidate schools*." (emphasis added). Clearly, the regulation must be read in a manner consistent with its authorizing statute.² Moreover, there have been numerous school closure appeals over the years where school systems, like Carroll, engaged in a system-wide analysis. See, e.g., *Blazejak v. Kent County Board of Education*, MSBE Op. No. 10-04 (2010) (where the Board of Education of Kent County's plan closed all three of its middle schools and consolidated them into a single Kent County Middle School at the former Chestertown Middle School site and closed two elementary schools and relocated them into former middle school buildings); *Martin*

² On this point, the Court of Appeals in *Dep't of Human Res., Baltimore City Dep't of Soc. Servs. v. Hayward*, 426 Md. 638, 658 (2012), has opined as follows:

Administrative agencies have broad authority to promulgate regulations, to be sure, but the exercise of that authority, granted by the Legislature, must be consistent, and not in conflict, with the statute the regulations are intended to implement. We have consistently held that the statute must control. *Lussier v. Maryland Racing Com'n*, 343 Md. 681, 688, 684 A.2d 804, 807 (1996) ("[W]here the Legislature has delegated such broad authority to a state administrative agency to promulgate regulations in an area, the agency's regulations are valid under the statute if they do not contradict the statutory language or purpose."); *Christ by Christ v. Maryland Dept. of Natural Resources*, 335 Md. 427, 437-38, 644 A.2d 34, 39 (1994) ("[T]his Court has upheld [an] agency's rules or regulations as long as they did not contradict the language or purpose of [a] statute."). Both COMAR 07.02.07.16B and 07.02.26.05B conflict with the plain language of § 5-706.1, as well as other relevant provisions in Title 5, Subtitle 7. As such, they must yield to the statute.

v. Garrett County Board of Education, MSBE Op. No. 12-35 (2012) (where the Board of Education of Garrett County's plan closed two elementary schools a year after closing another elementary school); *Marsh v. Allegany County Board of Education*, MSBE Op. No. 05-09 (where the Board of Education of Allegany County's plan closed two high schools in different areas of the county and consolidated them into a new high school in Frostburg, closed a middle school and moved it into one of the old high school buildings, and closed an elementary school).

Finally, Appellants' articulation of the legal standards governing school closing misconstrues well-settled State Board precedent. In their Exceptions, Appellants argue that "although there were past decisions of MSBE which suggested that demonstration of consideration of at least one factor meant the decision was not considered arbitrary or unreasonable, the MSBE now considers the failure to consider any of the other factors an illegal decision." Exceptions at 5 (citing *Concerned Citizens of Seven Oaks v. Board of Education of Anne Arundel County*, 7 Op. MSBE 654 (1997), at 678 n.8). Contrary to Appellants' argument, it is still well-settled that "one cannot test arbitrariness and unreasonableness by a mathematical count of the Board's solution criteria," and that the school closure decision will be affirmed "[s]o long as there is adequate reason, supported by at least one criterion." *Kensington Elementary School PTA v. Montgomery County Board of Education*, 2 Op. MSBE 671, 681 (1982); see *Slider v. Allegany County Board of Education*, MSBE Op. No. 00-35 (2000), at 53. COMAR 13A.02.09.01 requires consideration of all eight (8) factors, but State Board precedent is clear that the decision may be supported by at least one criteria. Appellants misinterpret this standard.

The ALJ in this case likewise properly found that "the regulations do not mandate that each factor must be identically weighted, simply that each be given consideration." Proposed Ruling, at 40. The ALJ then appropriately concluded that "while the Local Board may have

placed more significance on some factors over others (such as student enrollment trends and financial considerations over racial composition), it is clear that the Local Board reasonably considered each factor as required by law, and reached a rational conclusion to adopt the Final Plan.” *Id.* Nothing in Appellants’ Exceptions can dispute the inescapable conclusion that “the Local Board fulfilled its obligation to consider each of the eight factors and properly described its actions and rationale for each in the Final Plan.” *Id.* Appellants’ disagreement with the County Board’s conclusions does not render the decision arbitrary and unreasonable or illegal.³

The ALJ properly found that COMAR 13A.02.09.01 governs the instant school closing case. The ALJ also properly found that “[t]he procedures established by the Local Board essentially mirror those set forth in COMAR 13A.02.09.01.” Proposed Ruling, at 37. The ALJ appropriately concluded that “[t]he Local Board, in its authority, under established procedures, rendered its decision under the law. The record is very clear that the [Local Board] complied with the Education Article, MSDE regulations pertaining to school closings, and its internal regulations and policies in the manner and method in which it decided to adopt the Final plan.” Proposed Ruling, at 45. Appellants’ exceptions misconstrue the proper school closing standards governing this appeal and therefore the ALJ’s Proposed Ruling should be affirmed.

³ Another example of Appellants’ simple misconstruction of the applicable legal standards in this case is their argument that if the ALJ had conducted the appropriate analysis, she would have found that “Appellants’ challenges to the rationality of the conclusions of CCPS based on CCPS’ own documentation, regulations and admissions easily led to the conclusion that the analysis was never undertaken as alleged and/or that reasoning minds would have disputed its conclusions.” Exceptions, at 11. This assertion reveals Appellants’ strategy of merely attempting to poke holes in the County Board’s decision by expressing their disagreement with the County Board’s analysis and conclusions instead of coming forth with credible and substantive evidence demonstrating that the decision was arbitrary and unreasonable or illegal. Additionally, the arbitrary and unreasonable standard requires that “a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.” COMAR 13A.01.05.05B(2). Appellants’ assertion that “reasoning minds would have disputed [the County Board’s] conclusions” is indeed contemplated by the regulation and is *insufficient* to demonstrate the decision was arbitrary and unreasonable. *Id.* There is no doubt that some disagree with the County Board’s decision, and many of those who disagree are likely reasonable people. However, under the applicable standard, reasoning minds are permitted to disagree, but that does not mean the decision is arbitrary and unreasonable under COMAR 13A.01.05.05B(2). Appellants’ contention is completely irrelevant to the analysis of this case.

2. Summary Affirmance Standard

In reaching her proposed ruling, the ALJ properly applied the legal standards governing a Motion for Summary Decision under OAH's procedural regulations, which, as noted by the ALJ, "may be guided by case law that explains the nature of summary judgment in court proceedings." Proposed Ruling, at 32; *see also Langston Hughes Community Action Association v. Baltimore City Board of School Commissioners*, MSBE Op. No. 15-34 (2015). Summary decision, like summary affirmance under the State Board regulations, is appropriate where there is "no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." COMAR 28.02.01.12D. The ALJ also properly noted that review of a motion for summary decision involves a "two-level inquiry" – "that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as a matter of law." *Richman v. FWB Bank*, 122 Md. App. 110, 146, 712 A.2d 41, 58 (1998), *aff'd*, 354 Md. 472, 731 A.2d 916 (1999). Indeed, the "moving party must set forth sufficient grounds for summary judgment." *Bond v. Nibco, Inc.*, 96 Md. App. 127, 134, 623 A.2d 731, 734-35 (1993). The movant "must support his various contentions by placing before the court facts that would be admissible in evidence or otherwise detailing the absence of evidence in the record to support a cause of action." *Id.* (referencing *Washington Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 716, 382 A.2d 555 (1978)).

The ALJ also properly relied on the standards governing the non-moving party's burden in defeating a properly supported motion for summary judgment:

To defeat a motion for summary judgment, the non-moving party must establish that a genuine dispute exists as to a material fact. A material fact is one that will somehow affect the outcome of the case. If a dispute exists as to a fact that is not material to the outcome of the case, the entry of summary judgment is

not foreclosed. Moreover, mere formal denials or general allegations are not necessarily sufficient to prevent the entry of summary judgment.

Id. at 146-47; *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986) (“In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.”).

The Maryland Court of Special Appeals stated:

[O]nce the moving party has provided the court with sufficient grounds for summary judgment, [i]t is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit, giving a deposition, or answering interrogatories. Bald, unsupported statements or conclusions of law are insufficient.

Tri-Towns Shopping Ctr., Inc. v. First Fed. Sav. Bank of W. Maryland, 114 Md. App. 63, 66, 688 A.2d 998, 1000 (1997) (citations omitted) (emphasis in original); *see also King v. Bankerd*, 303 Md. 98, 112, 492 A.2d 608, 615 (1985) (“[W]hen the moving party has set forth sufficient grounds for summary judgment, the opposing party must show with some precision that there is a genuine dispute as to a material fact. An opposing party can never defeat a motion for summary judgment by alleging in a general manner that there is such a dispute.”); *Bond*, 96 Md.

App. at 135, 623 A.2d at 735 (“Thus, ‘[w]hen a moving party has set forth sufficient grounds for summary judgment, the party opposing the motion must show with ‘some precision’ that there is a genuine dispute as to a material fact,’ and place before the trial court facts that would be admissible in evidence.”) (citations omitted) (emphasis in original). The application of this standard governing the non-moving party’s burden in defeating a properly supported motion for summary affirmance is dispositive in this case, where the County Board’s motion for summary affirmance is supported by exhibits authenticated by affidavit, and Appellants’ Response lacks factual support by credible and substantive evidence and affidavit to create a genuine dispute of material fact.

In her Proposed Ruling, the ALJ made numerous findings of undisputed facts and concluded that “the Local Board performed its regulatory duty of considering each of the eight required factors.” Proposed Ruling, at 44. She further stated that “it is clear from the record that the Local Board carefully and comprehensively sought and acquired data, thoughtfully sifted through and analyzed that information, and reached a rational decision that was consistent with statutory and policy goals.” *Id.* The ALJ also found that “the Local Board has demonstrated that there is no material fact in issue as to whether its decision to adopt the Final Plan was legal.” *Id.* The ALJ also concluded that “[t]he record is very clear that the [Local Board] complied with the Education Article, MSDE regulations pertaining to school closings, and its own internal regulations and policies in the manner and method in which it decided to adopt the Final Plan.” *Id.* at 45. Having made a proper motion for summary affirmance supported by exhibits authenticated by affidavit, the burden shifted to Appellants to respond with evidentiary facts under oath sufficient to raise a genuine issue of material fact demonstrating that the County

Board's decision was arbitrary and unreasonable or illegal. Appellants failed to meet their burden.

Appellants offer a strained and incomplete view of the summary affirmance standards at play and contend that the ALJ's decision was unsupported and contradicted by the evidence. Exceptions, at 8-9. First, it is clear that the ALJ made all the necessary findings to conclude that the County Board's Motion demonstrated that there is no genuine issue of material fact and that the County Board is entitled to summary affirmance as a matter of law. The ALJ reviewed a voluminous record consisting of 52 documents supported by affidavit in the County Board's Motion and Reply and 29 documents submitted by Appellants in their Response unsupported by affidavit. *See* Proposed Ruling, at 4-9. The ALJ also made 54 findings of material facts about which there is no dispute. *See id.* at 9-31. The ALJ need not replicate the years of study and analysis that rationalized the Final Plan adopted by the Local Board on December 9, 2015 in order to come to the conclusion that no genuine dispute of material fact exists that the County Board's decision was not arbitrary and unreasonable or illegal. Rather, the County Board, as the moving party with a presumption of *prima facie* correctness in its favor, need only demonstrate that Appellants, as the non-moving party, cannot meet their burden of proof in accordance with the standard of review set forth in COMAR 13A.01.05.05.⁴ The ALJ found just that, after having properly examined the County Board's exhibits and affidavits in support of its Motion

⁴ *Accord Y.B. v. Board of Education of Prince George's County*, 895 F. Supp. 2d 689, 700 (D. Md. 2012) (reasoning in a special education appeal where, as here, the underlying decision is *prima facie* correct, that "a moving defendant is required only to show the absence of a genuine dispute of material fact; it need not affirmatively present evidence to maintain a motion for summary judgment," and, *citing Celotex*, 477 U.S. at 323, reasoning further that "we find no express or implied requirement in [former] Rule 56 that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim."). *See* Fed. R. Civ. P. 56(c)(1)(B) advisory committee notes (2010 amendment) ("And a party who does not have the trial burden of production may rely on a showing that a party who does have the trial burden cannot produce admissible evidence to carry its burden as to the fact."). *Cf. Dove v. Montgomery County Board of Education*, 178 Md. App. 702, 725 (2008) (reasoning that "the Commission's decision in favor of Dove was *prima facie* correct and thus Dove 'cannot suffer a summary judgment . . . against her on the ground that [she] failed to produce a *prima facie* case'").

and the Final Decision itself, which is *prima facie* correct. See Proposed Ruling, at 4-31 (Supporting Documentation and Undisputed Facts).

Second, in setting out their legal standards for summary affirmance, Appellants ignore their burden in opposing the County Board's Motion. Where, as here, the County Board filed a Motion for Summary Affirmance in accordance with COMAR 13A.01.05.03D and has produced exhibits authenticated by affidavit, the burden falls on the Appellant to precisely respond with evidentiary facts under oath sufficient to raise a genuine issue of *material* fact demonstrating that the County Board's decision was arbitrary and unreasonable or illegal. See *Bond, Anderson, Celotex, Tri-Towns, King, supra*. "[A] response must be supported by the same type and quality of evidence as is necessary to support a judgment after trial." P. Niemeyer, L. Schuett & J. Smithey, *Maryland Rules Commentary*, at 461 (4th ed. 2014). The ALJ made it clear that "Appellants have not offered any genuine issues of material fact in dispute." Proposed Ruling, at 38. The ALJ concluded that Appellants "offer[ed] no creditable or substantive evidence to assert a genuine dispute of material facts upon which the Local Board's Motion is based, the facts that support the Local Board's reasonable and legal actions in adopting the Final Plan." *Id.* Nothing in Appellants' Exceptions overcomes this inescapable conclusion. All Appellants offer are more conclusory allegations that the County Board "presented no evidence of a careful and thoughtful analysis and consideration of the relevant factors." Exceptions, at 11. As the ALJ recognized, Appellants' unsupported position is plainly contradicted by the record.

Third, Appellants ignore that the decision of the County Board is considered *prima facie* correct under COMAR 13A.01.05.05 and that they have the ultimate burden of proof by a preponderance of the evidence to demonstrate that the County Board's decision was arbitrary, unreasonable or illegal. See *Blazejak v. Kent County Board of Education*, MSBE Op. No. 10-04

(2010), at 29 (“The burden of proof is on the Appellants to prove their case by a preponderance of the evidence. COMAR 13A.01.05.05D. The Appellants contend that with regard to the alleged procedural violations, the burden shifted to the KCBOE when the Appellants raised those issued. I find no merit in that position . . . and it is contrary to COMAR 13A.01.05.05D.”) Indeed, it is Appellants’ burden to come forth with credible, admissible, and supported facts demonstrating that there is a genuine issue of material fact. The ALJ found that they have not, and there is absolutely nothing in Appellants Exceptions that overcomes this conclusion. Therefore, the County Board is entitled to summary affirmance in its favor.

B. The ALJ Properly Found that the County Board Considered All Eight Closing Factors.

In her Proposed Ruling, the ALJ made findings of undisputed fact related to the Superintendent’s Final School Closure and Boundary Adjustment Recommended Plan of November 11, 2015, which was updated by the Final Plan and incorporated by reference into a Motion as the County Board’s Final Plan which is the subject of the instant appeal. The ALJ found that the November 11 Plan included a lengthy analysis concerning the selection of North Carroll for closure. *See* Proposed Ruling, at 18-19. The ALJ also found that the November 11 Plan analyzed the following: Organizational Efficiencies, Operational Savings, and Capital Cost Avoidance; One-Time and On-Going Offsets to Savings; Student Transportation; Impact of Declining Enrollment on the School; analysis of available revenue sources; school utilization rates; and anticipated growth and yield, as well as appendices which included boundary maps, graphs of feeder patters, and graphs of comparative school populations. *See id.* at 19-20. The ALJ also found that the November 11 Plan considered the eight (8) school closing factors and supporting reasons required by COMAR 13A.02.09.01B. *See id.* at 20-26. In her analysis underlying the Proposed Ruling, the ALJ found that “[t]he Appellants argue that the Local Board

did not fully consider the eight required regulatory factors; however, they have provided no evidence to support that claim.” *Id.* at 39. The ALJ found that “[t]he evidence demonstrates that each factor was given full consideration.” *Id.* For the ALJ, it was “clear that the Local Board reasonably considered each factor, as required by law, and reached a rational conclusion to adopt the Final Plan.” *Id.* at 40.

In their Exceptions, Appellants argue that there are “clear disputes” as to whether the County Board thoroughly evaluated each of the eight (8) closing factors, and argue with respect to the following six (6) of the eight (8) factors:

Student Enrollment Trends

Appellants argue that the County Board failed to consider the “specific enrollment trends in the areas served by North Carroll and Manchester Valley as impacted by the growth in that area of the County,” and they question the accuracy of the enrollment figures relied upon by the County Board. Exceptions, at 14-19. Appellants also contend that the decision to close North Carroll was against sound educational policy. *See id.* at 19-21.

Appellants’ exceptions do nothing to disturb the finding by the ALJ that the “Local Board extensively explored and placed great emphasis on student enrollment trends, recognizing the substantial decline in student enrollment and its crucial impact on the economic viability of the school system and the affected students.” Proposed Ruling, at 41. The Local Board considered student enrollment trends as it was required to by COMAR 13A.02.09.01B(1) and by its Administrative Procedures for Public School Closings. The ALJ further reasoned:

[T]he Appellants dwell on what they believe the Local Board has not considered in its analysis and decision, suggesting that the information sought and obtained by the Local Board was either flawed or skewed. What they have not offered, however, are material facts . . . For example, the Appellants allege that the Local Board “artificially downwardly adjusted” student enrollment figures, yet they offer no evidence of manipulation or improper calculation.

Id. at 39. Appellants' exceptions offer nothing more than unsupported and misguided argument insufficient to generate any dispute of material fact that the County Board's decision was not arbitrary and unreasonable or illegal.

Appellants question the accuracy of the enrollment figures used by the County Board, citing to *Hall v. Somerset County Board of Education*, 4 Op. MSBE 628 (1986) as support for their contention that the use of inaccurate enrollment figures results in a decision subject to reversal. *See* Exceptions, at 14. However, the *Hall* case was reversed in part because the capacity figures varied wildly and were conceded to be inaccurate due to a dispute between the use of State-rated and County-rated capacity. *See Hall*, 4 Op. MSBE, at 631. More importantly, the reorganization plan in *Hall* was overturned because the plan, without correct calculations of student enrolment, school utilization, and bussing mileage, left the Deal Island School untouched as an underutilized predominately Caucasian enclave. *Id.* at 630.

Additionally, Appellants argue that "CCPS has an ever shifting collection of enrollment data which changed in its records." Exceptions, at 15. Indeed, with each additional year of enrollment data, the figures and projections change – such is the nature of conducting enrollment projections on a yearly basis. *Compare* County Board Memorandum in Support of Motion for Summary Affirmance Exhibit 2 Appendix C *with* Exhibit 27 Appendix C (the September 30, 2015 enrollment data released by the Maryland State Department of Education demonstrates that the declines in enrollment at Manchester Valley under the Superintendent's Plan was actually worse than predicted, with 2015 enrollment of 1392 compared to 1416 under the enrollment projections from the previous year). The school closure analysis has spanned many years, and in that time, enrollment numbers have changed, which affect the projections for future years. Appellants' argument fails to account for the realities at play in a student enrollment analysis.

Appellants also contend that there exists a dispute of fact because the Maryland Department of Planning found that the “2015 actual enrollment on the [County Board’s] calculation worksheet is not consistent with the official actual enrollment listed by the Maryland State Department of Education.” Exceptions, Exhibit C, at exhibit 1. First, the difference noted by the Maryland Department of Planning is minimal – a difference of .38% or ninety-six (96) students. *Id.* Additionally, in that very same letter, the Maryland Department of Planning found that “[t]here is a difference of less than 5% for years 2016-2025. You may use the local projections (2016-2025) for updating your 2016 Educational Facilities Master Plan. (EFMP).” *Id.* This minor discrepancy does not generate a genuine dispute of *material* fact the County Board reasonably considered student enrollment trends in reaching its decision. This fact is immaterial to the ultimate conclusion that the County Board conducted a valid and reliable analysis of enrollment trends at both North Carroll and Manchester Valley before reaching its final decision.

Appellants also argue that the County Board failed to consider future growth in Hampstead and Manchester. To the contrary, the County Board’s final decision gave the benefit of the doubt to those who anticipate new growth and assumed that all new growth would be single-family detached housing and therefore generate the historic yield of children (*i.e.*, the same figure used by the Town of Hampstead and Carroll County Government). Having given the benefit of the doubt to a highly speculative forecast of future growth, the County Board then found that there is no reasonable conclusion that new growth will out-distance its recommendation. As the ALJ stated, while “Appellants may not agree with the Local Board’s conclusions, that alone does not render the Local Board’s decision arbitrary, unreasonable, or illegal.” Proposed Ruling, at 40. Appellants’ unsupported argument is flatly contradicted by the

record. The County Board considered the possibility of future growth in reaching its final decision.

Finally, Appellants argue that it is contrary to sound educational policy to close North Carroll and consolidate the population with Manchester Valley. Appellants rely on a 2015 State Board study entitled “Preliminary Report on the Impact of School Size” and the County Board’s own statement that the optimal size for a high school is 1200 students. Exceptions, at 19-21. Appellants clearly disagree with the final decision, but they have still not generated a genuine dispute of material fact that the decision was not arbitrary and unreasonable or illegal. The State Board study upon which Appellants rely states that “[r]esearch indicates that smaller schools (1200 or less) provide more personal educational experiences for students.” Appellants’ Response to Motion for Summary Affirmance, Exhibit 24. This does not render the decision to close North Carroll arbitrary or unreasonable where the utilization data was compelling for closure.

In *Marsh v. Allegany County Board of Education*, MSBE Op. No. 05-09 (2009), at 5, the State Board rejected the appellants’ argument, similar to the one made by the instant Appellants. There, the appellants argued that recommendations to create community schools were ignored, and argued, with the support of expert opinions, that it was against sound educational policy not to build a smaller high school. *Id.* (ALJ’s Decision, at 21-23). The State Board concurred with the ALJ’s finding that “while the community school concept might be beneficial to some members of the community, the concept does nothing to alleviate underutilization of the school with respect to its State-rated capacity.” *Id.* at 5. The ALJ also stated that “to find that the BOE breached a form of ‘standard of care’ related to educational decision making by proposing a new [1,000] student school, the Appellant would have to show that [the expert’s] conclusions have

widespread acceptance in the nationwide educational community. He has not done so.” *Id.* (ALJ’s Decision, at 24-25). The ALJ emphasized that the “Appellant must be mindful that the Board’s decisions are quasi-legislative in nature . . . Therefore, even if there were merit to some of the arguments expounded by the Appellant, the BOE is free to choose another course of action if it deems that circumstances warrant it.” *Id.* (ALJ’s Decision at 25).

Under the County Board’s final decision, Manchester Valley would not even be Carroll County’s largest high school, with Westminster High School having over 200 more students. *See* Exceptions, Exhibit C at 5-29. All Appellants have done in their argument is point to one State Board study. This does not generate a genuine dispute of material fact. Appellants’ argument that the decision to close North Carroll is contrary to sound educational policy lacks support and ignores applicable standard of review and their burden in this case.

Appellants’ Exceptions offer nothing more than unsupported argument and allegations that the County Board failed to consider certain information and that certain information it relied upon was flawed. Just as the ALJ found that Appellants’ Response failed to offer any genuine issues of material facts in dispute, Appellants’ Exceptions likewise fail to generate any dispute of material fact that the County Board’s decision was not arbitrary and unreasonable or illegal. The County Board complied with COMAR 13A.02.09.01B(1) and its Administrative Procedures for Public School Closings by considering student enrollment trends.

Age or Condition of School Buildings

In her Proposed Decision, the ALJ found that the “Local Board properly analyzed the age and condition of the affected schools, recognizing that, given the comparison of age and condition, Manchester Valley was the logical survivor if either school could not remain economically operational.” Proposed Ruling, at 41. In their Exceptions, Appellants argue that

“[t]here was no evidence presented that the age or condition of North Carroll was such that it needed to be closed.” Exceptions, at 21. Appellants’ argument assumes that the school closure decision must be made on the basis of the age or condition of North Carroll alone. It does not. Rather, the County Board properly considered the age and condition of North Carroll compared to Manchester Valley in dealing with the issue of declining enrollment and underutilization, which is particularly acute in the county’s northeast region. The ALJ noted that “as long as there is adequate reason, supported by at least one criterion, the local board’s decision in a school closing case should prevail.” *Slider v. Allegany County Board of Education*, MSBE Op. No. 00-35 (2000), at 35 (citing *Kensington Elementary School PTS v. Montgomery County Board of Education*, MSBE Op. No. 82-31 (1982), at 681. Clearly the County Board considered the age and condition of the school buildings in reaching its final decision. Appellants’ mere disagreement with the decision is insufficient to demonstrate a genuine dispute of material fact.

Transportation

In her Proposed Ruling, the ALJ found that “[t]he Local Board considered the issues of transportation as to all three types of schools, including the redesign of bus routes, ‘transportation tier’ times, distance, and determined that current bus service to the high schools was sufficient; given the relative proximity of the schools, this does not appear to be an unreasonable conclusion.” Proposed Ruling, at 41. Appellants assert that “[t]here exists no evidence in the record that CCPS ever actually considered the transportation impact of North Carroll’s closure.” Exceptions, at 22. Appellants rely on *Marsh v. Allegany County Board of Education*, MSBE Op. No. 05-09 (2003) and *Hall v. Somerset County Board of Education*, 4 Op. MSBE 628 (1986) for their argument that the transportation factor “includes a review of the safety and suitability of new routes travelled by students,” and that the County Board’s decision

should be reversed for failure to undertake a study of such impacts. Exceptions, at 24. The transportation factor under COMAR, however, simply requires that the County Board consider the impact of the proposed closing on transportation.

In *Marsh*, the State Board adopted the findings of fact and conclusions of law by the ALJ and affirmed the school closing and consolidation decision reached by the local board where the “local board gave a detailed explanation in its rationale concerning the impact of the proposed closing on” the eight school closing factors, including transportation. *Marsh*, MSBE Op. No. 05-09, at 7. The State Board noted that the “ALJ found that transporting students . . . using school bus transportation on Route 36 would be safe.” *Id.* at 4. However, in reaching its decision to close Beall and Westmar High and Westmar Middle, the local board simply “considered transportation costs and the need for students to travel greater distances, and overall deemed the costs and distances to be manageable[.]” *Id.* (ALJ’s Decision), at 26, 28. The appellant argued that the local board failed to consider safety, and called the local board’s supervisor of transportation as an adverse witness, who testified that the bus route was a modern highway and that “school bus traveling distances have no relationship to accident rates and that conveying students to school on a school bus remains one of the safest methods of transportation available.” *Id.* (ALJ’s Decision) at 35. The ALJ found that the appellant made “no showing of unreasonableness.” *Id.*

In *Hall*, the State Board found that in rural counties, having to bus students great distances as far as 18 or 20 miles “does not make the plan arbitrary or unreasonable.” *Hall*, 4 Op. MSBE at 632. The State Board’s concern in that case was that at the time the school closure decision was made, the local board “did not have the correct calculations in regard to student enrolments, school utilization, and busing mileage,” and the State Board stated that the local

board “should have the benefit of correct figures before a final decision is made on a redistricting plan that will affect the entire school system.” *Id.* Additionally, there was no consideration of the safety of the proposed routes.

In the present case, Appellants argue that the County Board failed to consider transportation, but offer no credible evidence to support that claim. They argue that “safety and suitability” must be considered, but offer no argument or evidence that the County Board’s proposed routes are unsafe. *See* Exceptions, at 24. They cast the County Board’s consideration of transportation as a “simple transportation review” yet at the same time argue that the County Board utterly failed to consider transportation. *Id.* In short, Appellants’ arguments are contradictory. It is undisputed that the County Board considered transportation on pages 17-18 and Appendix G of the Superintendent’s Final Plan. The County Board considered the redesign of bus routes to meet the new boundaries and feeder patterns and considered ride times and transportation costs associated with the closures. The County Board considered minimum, maximum, and average ride times at each school as well as distances from school and considered the distances from school under the Final Plan. Indeed, the County Board considered that the average commute distance for students to Manchester Valley will be lower than the countywide average for other high school students. In short, the record clearly indicates that the County Board considered transportation in reaching its decision. Appellants simply disagree with the County Board’s analysis and conclusions. The ALJ properly found that Appellants failed to offer any credible evidence sufficient to create a genuine dispute of material fact that the County Board’s decision was not arbitrary and unreasonable or illegal with regard to its consideration of transportation.

Educational Programs

In her Proposed Ruling, the ALJ first acknowledged her task of determining “whether there are any material facts that would establish that the Local Board’s decision was either (1) contrary to sound educational policy or (2) could not have been reasonably reached by a reasoning mind.” Proposed Ruling, at 41. The ALJ also recognized that Section 2-205 of the Education Article gives the State Board the power and duty to determine the elementary and secondary policies of the State and that Section 4-108(3) provides that each county board, with the advice of the superintendent, shall determine the educational policies of the county school system. *See id.* at 41. Finally, the ALJ noted that the “reasoning mind” standard in COMAR 13A.01.05.05B(2) is a broad standard, giving great deference to the decisions of local board of education. With these principles in mind, the ALJ found that “the Local Board reasoned that due to the current stretching of staff, more academic opportunities would be created by combining the resources of North Carroll and Manchester Valley.” *Id.* at 42. She also found that the County Board considered the advantages and challenges associated with the relocation of the high school autism program to Winters Mill High. *Id.*

In their Exceptions, Appellants argue that “it is clear that CCPS never reviewed the educational impact of closing North Carroll,” and they contend that “[a]lthough there were summary conclusions provided in the closure decision that students at North Carroll and Manchester Valley suffered educational deficiencies due to their smaller student populations, CCPS never undertook any review of those opportunities prior to reaching that conclusion.” Exceptions, at 25. Appellants also argue that the County Board’s “conclusions of educational impacts offered no consideration of its and the State’s acknowledged benefits and successes achievable in smaller schools[.]” *Id.*

Appellants' arguments ignore the record evidence in this case and once more fail to offer any credible evidence sufficient to create a genuine dispute of material fact in this case. First, it is perfectly clear that the County Board, Superintendent, and constituent groups analyzed the educational impacts of school closures prior to the County Board's decision. The County Board included in its Reply to Appellants' Response to Motion for Summary Affirmance at Exhibit 2 the minutes of the Community Advisory Council meeting of September 16, 2015, as well as a PowerPoint presentation that Assistant Superintendent of Instruction Steven Johnson presented to that group along with a chart on educational impacts. The County Board also noted that the PowerPoint and chart were also posted on the County Board's website under the FAQ's of the Boundary Adjustment Plan, and it further noted that educational impacts were discussed at the September 28, 2015 work session with the Board of Education. *See* Memorandum in Reply to Response to Motion for Summary Affirmance, at 13.

Second, that the County Board did not adhere to a State Board study does not render its decision arbitrary and unreasonable or illegal, and Appellants have not come forth with any facts demonstrating that the decision is contrary to sound educational policy. As the ALJ properly acknowledged, Section 4-108(3) of the Education Article vests the power to determine the educational policies of the county school system with the county board, with the advice of the county superintendent. Appellants have offered nothing to create a genuine dispute of material fact on this issue other than point to one study, which is insufficient to meet their burden to overcome summary affirmance. This is even more so considering that the local board's decision to close and consolidate schools is quasi-legislative in nature, and thus "even if there were merit to some of the arguments expounded by the Appellant, the BOE is free to choose another course of action if it deems that circumstances warrant it." *See Marsh* (ALJ Decision), at 25 (rejecting

the appellant's argument and expert opinions that the plan to build a 1,000 student school was contrary to sound educational policy because the size was not appropriate for students in a rural and impoverished area). In short, the County Board fulfilled its obligations to consider the educational programs prong of COMAR and its administrative procedures.

Financial Considerations

The ALJ found that “[t]he Local Board scrutinized the data regarding the potential costs and cost avoidance associated with each of the various options studied, and came to the conclusion that the Final Plan encompassed the most reasonable approach to solving the financial predicament of the Carroll County school system.” Proposed Ruling, at 42. The ALJ concluded that “[t]he Local Board reasonably identified the financial advantages and challenges of the Final Plan in reaching a functional and rational solution to a long-standing and seemingly disastrous and insurmountable problem, if not timely addressed.” *Id.* The ALJ also analyzed Appellants’ argument regarding the financial considerations of the County Board, concluding that “[t]heir claim, however, falls short.” *Id.* at 43. In rejecting Appellants’ argument that the County Board’s concern over funding has been cured by the Governor’s additional \$4 million in educational grant funds, the ALJ noted that the additional funding is not earmarked for a specific use, was based on declining enrollment and reductions in State formula funding, and would be one-time, stop-gap funding with no guarantee of repetition. *See id.* at 43. The ALJ concluded that “a possible single infusion of funds does not negate the reasonableness of the Local Board’s consideration of long-term financial concerns as a factor in adopting the Final Plan.” *Id.*

In their Exceptions, Appellants “[do] not challenge the fact that CCPS was facing financial crisis and was looking to save money.” Exceptions, at 26. Rather, Appellants reiterate the same arguments they raised in their Response – *i.e.*, that there is a dispute as to the actual

savings from closing North Carroll and that “CCPS hid from the public that CCPS intended to use New Windsor for its headquarters.” *Id.* at 26-28. Appellants’ unfounded dispute regarding the savings achieved from the school closure decision is insufficient to generate a genuine dispute of material fact that the County Board’s decision was not arbitrary and unreasonable or illegal. *See Bushey Drive Elementary School Parents v. Board of Education of Montgomery County*, MSBE Op. No. 76-1, at 442 (1976) (stating that “while there may be some dispute over precisely how much money is saved by any one school consolidation, there is no doubt that consolidations effect some savings”).

The ALJ neatly summarized the sorts of arguments raised by Appellants on the financial considerations prong:

The Appellants’ Response and Supplemental Response are replete with accusations, denunciations, and theories of some kind of conspiratorial plot by the Local Board to eliminate schools in order to further a nefarious agenda. The Appellants have combed various documents, including hand-picked portions of notes and emails of members of the Local Board to try and construct a scenario where they allege that the “true intentions” of the Local Board were to “support a hidden public agenda for the schools’ properties.” While the Appellants’ allegations may be provocative, they offer no creditable or substantive evidence to assert a genuine dispute of the material facts upon which the Local Board’s Motion is based, the facts that support the Local Board’s reasonable and legal actions in adopting the Final Plan.

Proposed Ruling, at 38. Appellants’ Exceptions do absolutely nothing to overcome the ALJ’s findings that Appellants have failed to create any genuine dispute of material fact in this case.

Impact on Community in Geographic Attendance Area for School Proposed to be Closed and School, or Schools, to Which Students Will be Relocating

In her Proposed Ruling, the ALJ found that “[a]s to the impact on the community in the geographic attendance area, the Local Board fully analyzed the effect the Final Plan would have in relocating the North Carroll students to Manchester Valley and Westminster High.” Proposed Ruling, at 43. The ALJ noted that “[w]hile acknowledging that the relocation would boost

Manchester Valley enrollment to temporarily exceed State Rated Capacity, the Local Board reasoned that this utilization would only last through 2015, which has passed.” *Id.* at 43-44. The ALJ also pointed out that “State Rated Capacity has been defined as 85%; therefore the true utilization of Manchester Valley would not be a true 100% capacity, and the number of students would not exceed that number.” *Id.* at 44 n.28. The ALJ also recognized that the “Local Board further noted that even if the relative utilization rates might be uneven, it minimized the likelihood that the same students would be redistricted in the future.” *Id.* at 44.

In their Exceptions, Appellants reiterate the argument they raised in their Response that the County Board “did not consider any impact that a decision to close North Carroll and consolidate with Manchester Valley had on either the Hampstead or Manchester communities.” Exceptions, at 28. Appellants counter the County Board’s argument and ALJ’s finding that the County Board’s only responsibility under the regulations was to consider the education-related impact of school closings with an unsupported contention that the County Board and the ALJ are “simply incorrect.” Exceptions, at 29. It is solely upon this basis that Appellants likewise take exception to the ALJ’s Proposed Ruling on Motion to Dismiss, asserting that the ALJ “made an error in finding no standing for the Towns of Hampstead and Manchester, the identified business owners and the North Carroll Rec Council. All were directly affected by either a loss of revenue or a corresponding increased costs because of CCPS’ decision.” Exceptions, at 29 n. 19.⁵

⁵ The County Board respectfully requests that the State Board adopt the ALJ’s Proposed Ruling granting the County Board’s Motion to Dismiss. In her Proposed Ruling, the ALJ analyzed Maryland law on administrative standing and the State Board’s established and long-standing policy for determining the standing of a party to appeal the decision of a local board. *See* Proposed Ruling on Motion to Dismiss, at 5-10. The ALJ properly found that the Mayors of Hampstead and Manchester’s interests were too broad to meet the standing requirements and that the NCRC and Belisimo’s and Illiano’s J&P Restaurant failed to sufficiently allege an “injury in fact” as a result of the County Board’s decision. *Id.* at 10-13.

Appellants’ sole exception to the ALJ’s Proposed Ruling on Motion to Dismiss focuses on her failure to consider that the Appellants will be affected by increased costs or decreased revenues. First, Appellants’ argument conflates the eighth COMAR school closing factor with the requirements for standing and disregards that the County Board is

Appellants misconstrue the eighth COMAR factor. Appellants' reliance on *Concerned Citizens of Seven Oaks v. Board of Education of Anne Arundel County*, 7 Op. MSBE 654 (1997) is unavailing because that case is distinguishable from the case at hand. In that case, the ALJ made several findings that make *Concerned Citizens* unique: (1) "Fort Meade is a federal military base, which is separate and apart from Odenton, Maryland[;]" (2) "Only military personnel and their dependents may gain access to the facilities and organizations on the base. Only military dependents may participate in the youth sports leagues sponsored by the base administration[;]" and (3) "Only students who attend schools in the Arundel feeder system can join the Greater Odenton Recreational Council ("GORC"), a youth recreational league." *Concerned Citizens*, (ALJ Decision) at 668. The State Board then reasoned that the local board's "decision to move Seven Oaks children to the Meade feeder system is contrary to educational policy [because] it would effectively bar the students from participating in many extracurricular activities." *Id.* at 657. The State Board relied on the fact that "non-military children are not permitted to join the recreational sports leagues affiliated with Fort Meade" and that "children are not permitted to participate in the Odenton Recreational Council unless they attend school in the Arundel feeder system." *Id.* "Consequently, the children of Seven Oaks whose families are non-military would not be entitled to engage in activities available to other children in the County." *Id.* Under these unique circumstances was the ability for children to participate in recreational activities considered a "valid consideration relating to the impact on the community." *Id.*

only required to consider the education related impact of the school closings. *See infra* p. 29. Second, Appellants also fail to address the ALJ's findings that the total interests of the Mayors of Hampstead and Manchester are far too broad to meet the standing requirements in this case. *See Stratford Woods Home Owner's Association, Inc. v. Montgomery County Board of Education*, 6 Op. MSBE 238 (1992); *Clarksburg Civic Association v. Montgomery County Board of Education*, MSBE Op. No. 07-34 (2007). Third, Appellants' argument does nothing to counter the ALJ's findings that the alleged injuries suffered by the NCRC and Belisimo's and Illiano's J&P Restaurant were far too conjectural and speculative and lack any specific analysis or evidentiary proof. The State Board should adopt the Proposed Ruling of the ALJ granting the County Board's Motion to Dismiss.

Appellants have made no argument, much less factual showing, that the unique circumstances present in *Concerned Citizens* apply to the instant case. Unlike in *Concerned Citizens*, there is no direct tie between the school system and the North Carroll Recreation Council ("NCRC"), and the County Board's school closure decision has absolutely nothing to do with the NCRC, which is a part of the Carroll County Department of Recreation and Parks. The ALJ in the present case properly relied on Administrative Law Judge Thomas G. Welshko's analysis of the eighth COMAR factor, which is particularly instructive in the instant case:

In addition to maintaining that the affected communities allegedly do not overwhelmingly endorse the BOE's plan, the Appellant asserted that the BOE has ignored other aspects of how school closure impacts a community. He presented the testimony of the Mayor of Westernport, the Honorable Donald T. Smith. Mayor Smith testified that what the BOE has failed to take into account is that in rural communities, school buildings have greater value to the populace than they do in urban or suburban areas. He emphasized that a school might be the only public building in such communities (with the possible exception of a fire house). Consequently, many civic groups use schools to have their meetings. Amateur and children's sports leagues use school playing fields. Schools serve as places of shelter during weather emergencies. Therefore, Mayor Smith explained that the loss of Westmar Middle School would have a far greater impact on Westernport than the BOE has stated in its rationale.

The BOE, however, contended that the community is not something the regulations require it to assess. The BOE's responsibility is to provide public education to students, not to keep schools operating for community use. Additionally, the BOE stated that since it did not plan to demolish the school, its facilities could still be used for community purposes. The BOE stated that it believes based on the public comments it has received, there is overwhelming support for its plan, more so than during prior consolidation plans.

Again, the Appellant is arguing a *non sequitur*. The BOE's only responsibility under the regulatory scheme is to assess the education-related impact a school closing has on the community. It is not required to assess the impact a school closing has on civic groups, nor is it required to assess the loss of the school building as a place of shelter. In addition, the BOE received comments both for and against its plan. It exercised its quasi-legislative discretion and chose a course of action. I conclude that the BOE's rationale supported its decision on this point. The Appellant's arguments lack merit.

Marsh v. Allegany County Board of Education, MSBE Op. No. 05-99 (2005) (adopting the Findings of Fact and Conclusions of Law of the ALJ and affirming the school closings and consolidation decision of the local board) (ALJ's Proposed Order, OAH No. MSDE-BE-09-04-31234, at 50-51) (emphasis added). In short, the standard Appellants seek to impose on the County Board far exceeds that which a local board is required to consider in reaching a school closure decision. Appellants' arguments lack merit and fail to create a genuine dispute of material fact.

IV. CONCLUSION

Appellants have failed to raise a genuine dispute of material fact in their Exceptions. The ALJ conducted a comprehensive review of the record, made findings of undisputed facts, and concluded that the County Board is entitled to summary affirmance as a matter of law. The ALJ also found that Appellants have failed to offer any credible and substantive evidence sufficient to demonstrate a genuine dispute of material fact that the County Board's decision was not arbitrary and unreasonable or illegal. For these reasons, the ALJ properly ruled that the County Board's Motion should be granted and the State Board should adopt the ALJ's proposed rulings.

WHEREFORE, Appellee, Board of Education of Carroll County, prays that the State Board adopt the proposed decision of the Administrative Law Judge to grant the Board's Motion to Dismiss or in the Alternative Motion for Summary Affirmance.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2016, a copy of the Response of the Board of Education of Carroll County to the Exceptions to Summary Affirmance by *Harrison W., et al.*, was sent by first class mail, postage pre-paid, to:

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